

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Cavada, et al.
U.S. Serial No.: 10/776,028
Filing Date: February 10, 2004
Examiner: Shawntina T. Fuqua
Art Unit: 3742
Title: Multi-Purpose Oven Using Infrared
Heating for Reduced Cooking Time

MAIL STOP AF

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

The following Pre-Appeal Brief Request for Review ("Request") is being filed in accordance with the provisions set forth in the Official Gazette Notice of July 12, 2005 ("OG Notice"). Pursuant to the OG Notice, this Request is being filed concurrently with a Notice of Appeal. The Applicants respectfully request reconsideration of the Application in light of the remarks set forth below.

REMARKS

In the Final Office Action dated March 21, 2006, Claims 18, 19 and 66-69 were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 1 was amended and new Claims 71, 82, 95, 108

and 121 were added to incorporate respective ones of the indicated allowable claims into independent form.

Previously presented independent Claim 1 was amended to include all elements and limitations of allowable Claims 16 and 18.

New independent Claim 71 includes all elements and limitations of previously presented Claim 1, and allowable Claims 16 and 19.

New independent Claim 82 includes all elements and limitations of previously presented Claim 1 and allowable Claim 66.

New independent Claim 95 includes all elements and limitations of previously presented Claim 1 and allowable Claim 67.

New independent Claim 108 includes all elements and limitations of previously presented Claim 1 and allowable Claim 68.

New independent Claim 121 includes all elements and limitations of previously presented Claims 1 and allowable Claim 69.

Please see pages 21-24 of the Response to Final Office Action, dated March 21, 2006, for a more detailed explanation of how the original independent claims were amended and new independent claims derived, and what claims depend from these independent claims.

I. Brief Summary of Selected Portions of Prosecution History

a. Final Office Action

In the Final Office Action, dated of March 21, 2006, Claims 18, 19 and 66-69 were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants filed a Response to the Final Office

Action on May 22, 2006, by amending the claims to incorporate the limitations of the allowable claims as described hereinabove.

b. Advisory Action

In an Advisory Action, dated June 16, 2006, the amendments to the claims to put them in allowable form were denied entry because the Advisory Action alleged that the amendments to the claims raised new issues that would require further consideration and/or research. No further explanation was made in this Advisory Action.

II. Errors of Record

a. Improper Denial of Entry of Amendments

The denial of entry of amendments to claims that rewrite particular dependent claims in independent format after a Final Office Action is clearly a legal error. As stated in 37 CFR § 1.75: "Claims in dependent form shall be construed to include all the limitations of the claim incorporated by reference into the dependent claim." Thus, as a matter of law, rewriting a dependent claim into independent format cannot change the scope of the claim. As already presented in the Response to the Final Office Action, such amendments do not raise new issues that would require further consideration. Rather, these amendments place the application in condition for allowance. *See* Response to Office Action, pages 21-24.

II. Request for Relief from Errors

Applicants respectfully request that a notice of allowance be issued on the claims as amended, since there are no substantive issues to Appeal.

CONCLUSION

In light of the above amendments and remarks Applicants respectfully submit that the application is now in condition for allowance and early notice of the same is earnestly solicited. Should the Panel have any questions, comments or suggestions in furtherance of the prosecution of this application, the Panel or representative thereof is invited to contact the attorney of record by telephone or facsimile.

Applicants believe that there are no additional fees, other than what is attached herewith, due in association with the filing of this Request. However, should the Commissioner deem that any additional fees are due, including any fees for further extensions of time, Applicants respectfully request that the Commissioner accept this as a Petition Therefore, and direct that any and all fees determined to be due are charged to Baker Botts L.L.P. **Deposit Account No. 02-0383**, (*formerly Baker & Botts, L.L.P.*) **Order Number 074104.0113**.

Respectfully submitted,
BAKER BOTTS L.L.P. **(023640)**

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June 21, 2006

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